

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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DEPUTY
SPOKANE, WASHINGTON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESSE GERALD DAVIS,

Defendant.

2:20-CR-138-TOR

Pretrial Diversion Agreement

Plaintiff United States of America, by and through Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, Richard R. Barker, Assistant United States Attorney, and Defendant JESSE GERALD DAVIS (“Defendant”), both individually and by and through his counsel of record, Andrea George of the Federal Defender’s Office, agree to the following Pretrial Diversion Agreement.

I. Overview

1. It is alleged in an Indictment returned by the Grand Jury on October 21, 2020, in Case Number 2:20-CR-138-TOR that JESSE GERALD DAVIS committed the following offenses:

- a. Count 1: On or about August 9, 2020, in the Eastern District of Washington, within the external boundaries of the Spokane Tribe of Indians Reservation, Defendant JESSE GERALD DAVIS, an Indian, did by force or threat, knowingly engage in sexual contact, to wit:

1 intentionally touching the inner thigh of another person who had
2 attained the age of 12 years but had not attained the age of 16 years
3 and was at least four years younger than Defendant JESSE GERALD
4 DAVIS, all in violation of 18 U.S.C. §§ 1153, 2244(a)(5), 2246(3).

5 b. Count 2: On or about August 9, 2020, in the Eastern District of
6 Washington, within the external boundaries of the Spokane Tribe of
7 Indians Reservation, Defendant JESSE GERALD DAVIS, an Indian,
8 did knowingly attempt to cause Minor 1, a child who had attained the
9 age of 12 years but had not attained the age of 16 years and was at
10 least four years younger than Defendant JESSE GERALD DAVIS, to
11 engage in a sexual act, to wit: contact between the vulva of Minor 1
12 and the penis of Defendant JESSE GERALD DAVIS, all in violation
13 of 18 U.S.C. §§ 1153, 2243(a), 2246(2)(C).

- 14 2. On the authority of the Attorney General of the United States, through
15 Vanessa R. Waldref, United States Attorney for the Eastern District of
16 Washington, the Indictment shall be dismissed without prejudice. The
17 decision to prosecute Defendant for the aforementioned violations and other
18 known misconduct shall be deferred for 60 months. This 60-month period
19 begins on the date this Agreement accepted by the Court after it is signed by
20 an Assistant United States Attorney, Defendant, and Defendant's counsel.
- 21 3. This Agreement is not intended—and shall not be construed—as a liability
22 admission by the United States or Defendant.
- 23 4. The United States and Defendant agree that the Court will maintain
24 jurisdiction over this matter and that the Court shall be the final arbiter on 1)
25 whether this Agreement has been breached and, if so, 2) the appropriate
26 remedy, which may include either terminating the Agreement or modifying
27 its terms. A modification may include extending the Agreement's 60-month
28 period by an additional twelve (12) months (for a maximum of 72 months).

II. Terms

JESSE GERALD DAVIS agrees to the following terms:

1. **Supervision.** Defendant agrees to be supervised by a supervising officer of the United States Probation Office during this 60-month diversion period (or longer, if the period is extended by the Court). Defendant's supervision terms include the following:
 - a. Defendant shall not violate any federal, state, or local law (this does not apply to civil infractions such as speeding).
 - b. Defendant shall not possess, control and/or consume any controlled substance, which includes marijuana, or items commonly used for the consumption of such substances (drug paraphernalia) without the express permission of his supervising officer.
 - c. If Defendant is arrested or has any official contact with a law enforcement officer in a civil or criminal investigative capacity, he shall notify his supervising diversion officer within two (2) business days.
 - d. Defendant shall report in the manner directed by his supervising officer, to include telephonic and electronic communication, to his supervising officer as directed, and keep him/her informed of his residence location.
 - e. Defendant must not knowingly leave the federal judicial district where he is authorized to reside without first getting permission from his supervising officer.
 - f. Defendant must be truthful when responding to the questions asked by his supervising officer.
 - g. Defendant must live at a place approved by his supervising officer. If he plans to change where he lives or anything about his living arrangements (such as the people he lives with), he must notify his

1 supervising officer at least 10 days before the change. If notifying his
2 supervising officer in advance is not possible due to unanticipated
3 circumstances, he must notify his supervising officer within 72 hours
4 of becoming aware of a change or expected change.

5 h. Defendant must allow his supervising officer to visit him at any time
6 at his home or elsewhere, and must permit his supervising officer to
7 take any items prohibited by the conditions of his supervision that he
8 or she observes in plain view.

9 i. Defendant must report law enforcement contact to his supervising
10 officer within 72 hours.

11 j. Defendant must not own, possess, or have access to a firearm,
12 ammunition, a destructive device, or a dangerous weapon.

13 k. Defendant shall have no contact with a child under age 18 without the
14 presence of an adult and advance approval of his supervising officer.
15 He will immediately report any unauthorized contact with minor aged
16 children to his supervising officer. As part of this provision,
17 Defendant shall have no contact with Minor 1 or Minor 1's younger
18 sister.

19 l. Defendant may not access the Internet without the express advanced
20 permission of his supervising officer.

21 m. Defendant may not possess an electronic device that has the ability to
22 access the Internet without the express advanced permission of his
23 supervising officer.

24 n. Defendant shall allow his supervising officer, or designee, to conduct
25 random inspections, including retrieval and copying of data from any
26 computer, or any personal computing device that he possesses or has
27 access to, including any internal or external peripherals. This may
28 require temporary removal of the equipment for a more thorough

1 inspection. Defendant shall not possess or use any public or private
2 data encryption technique or program.

3 o. Defendant shall not reside or loiter within 500 feet of places where
4 children congregate, which includes playgrounds, primary and
5 secondary schools, city parks, daycare centers, and arcades.

6 p. Defendant shall complete a mental health evaluation and follow any
7 treatment recommendations of the evaluating professional which do
8 not require forced or psychotropic medication and/or inpatient
9 confinement, absent further order of the court. He shall allow
10 reciprocal release of information between his supervising officer and
11 treatment provider. He shall contribute to the cost of treatment
12 according to his ability to pay.

13 q. Defendant shall be prohibited from possessing or manufacturing any
14 material, including videos, magazines, photographs, computer-
15 generated depictions, or any other media that depict sexually explicit
16 conduct involving children or adults, as defined at 18 U.S.C.

17 § 2256(2).

18 2. **Tolling.** Defendant agrees that all applicable statutes of limitations for the
19 offenses alleged in the Indictment shall be tolled from the date this
20 Agreement is entered onto the Court's docket until the Agreement expires or
21 is terminated by the Court. Defendant agrees that the Agreement's tolling
22 provision does not abridge or curtail the applicable statute of limitations in
23 any way, but rather extends the applicable statute of limitations by the time
24 period that the Agreement is in effect.

25 3. **Speedy Trial.** Defendant acknowledges that he enjoys speedy trial rights
26 under both the Sixth Amendment to the United States Constitution and
27 18 U.S.C. § 3161. Defendant agrees that he will neither move the Court to
28 dismiss any charges nor assert any defenses based on alleged Constitutional

1 or statutory Speedy Trial violations while prosecution is deferred under this
2 Agreement. Defendant further agrees that if this Agreement is terminated by
3 the Court and the United States seeks another Indictment and resumes
4 prosecuting him for the offenses alleged in the Indictment filed on October
5 21, 2020, any delays stemming from this Agreement are requested by him,
6 and these delays are reasonable, necessary, and in the interest of justice. *See*
7 18 U.S.C. § 3161(h)(2).

- 8 4. **Breach.** If, after a hearing, the Court terminates the Agreement based on a
9 breach by Defendant, then the United States may resume its prosecution
10 against Defendant for any available charges, to include, but not limited to,
11 the charges set forth in the October 21, 2020 Indictment.

12 The United States agrees to the following terms:

- 13 1. **Inadmissibility of Pretrial Diversion in Prosecution.** If the Court
14 determines that this Agreement has been breached, such that the case
15 resumes being on a “trial track,” the United States agrees that neither this
16 Agreement nor any other documents filed as a result of Defendant’s
17 participation in a pretrial diversion program shall be used against him in
18 connection with any prosecution based on the offense alleged in the
19 Indictment.
- 20 2. **Defer Prosecution.** The United States agrees to defer prosecuting the
21 above-captioned matter for 60 months (or up to 72 months, if the Agreement
22 is extended by the Court). If Defendant completes this Agreement (even if
23 there are modifications or extensions), the United States will not charge
24 Defendant with any offenses stemming from the conduct set forth in the
25 Indictment.
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28

1 Vanessa R. Waldref
2 United States Attorney

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4 
5 Richard R. Barker
6 Assistant United States Attorney

11/9/2021
Date

7 I have read this Diversion Agreement in its entirety and I agree to all parts of it. I
8 understand the conditions of my pre-trial diversion and I agree that I will comply with
9 them. I understand that non-compliance or breach will be addressed as set forth in this
10 Diversion Agreement.

11
12 
13 JESSE GERALD DAVIS
14 Defendant


11-09-21
Date

15 I have reviewed and discussed every part of this Diversion Agreement with my client.
16 I believe it is in the best interests of my client to enter into this Diversion Agreement.

17
18 
19 Andrea George
20 Counsel for JESSE GERALD DAVIS

11-09-2021
Date

21 I approve this Agreement without passing judgment on the merits or wisdom of
22 diversion in this case.

23
24 
25 Thomas O. Rice
26 United States District Judge

11/9/2021
Date